



CAMBRIDGE LOS ANGELES PHOENIX [PLLC] SEATTLE

hagens-berman.com

ONE MAIN STREET • CAMBRIDGE, MA 02142
(617) 482-3700 • FAX (617) 482-3003THOMAS M. SOBOL
tom@hagens-berman.com

February 3, 2005

VIA FACSIMILEHonorable Patti B. Saris
United States District Court
One Courthouse Way, Courtroom 13
Boston, MA 02210Re: *In re Pharmaceutical Industry Average Wholesale Price Litigation*
Civil Action No. 01-12257-PBS; MDL No. 1456

Dear Judge Saris:

Plaintiffs have no objection to a telephone conference with Your Honor to discuss any issues. However, we disagree with Defendants that there are "critical scheduling issues" that have "arisen in the last several days."

As this Court is aware, on October 13, 2004, all parties filed a joint motion to extend discovery dates that were set forth in Case Management Order No. 10. The motion sought extension of certain discovery deadlines (fact, discovery and discovery of experts) and sought to re-set dates for summary judgment. On October 20, 2004, this Court entered an order denying that motion, but stating: "The parties may continue with the discovery past the cut-off, but the motion for summary judgment must be filed by April 15, [2005]."

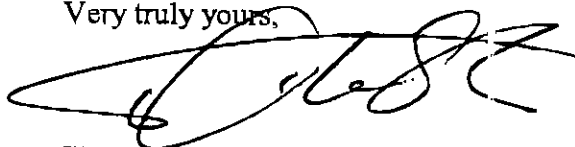
The October 20 Order appears clear that discovery may proceed after the dates in the earlier order; it is summary judgment that must go forward in April. Discovery is in fact intensely underway with dozens of merit depositions scheduled to take place in the next¹ few months. Indeed, it is our understanding that Defendants themselves concede that it makes no sense to have liability expert reports due while substantial fact discovery remains underway. Thus, both by order of this Court on October 20 and given common sense, there is no liability expert report date this past Monday, January 31, 2005.

¹ BMS last week produced an entire new database from which Dr. Hartman must recalculate spreads and ASPs. It cannot be possible that Defendants really believe that liability reports are due when the basic data is still being produced. As to the general outlines of expert testimony, Defendants have a vast amount of material from Dr. Hartman's two declarations and Dr. Rosenthal's tutorial.

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As to the class certification hearing, MDL Plaintiffs' counsel are prepared to proceed whenever the Court wishes. We do see some merit in allowing the parties some time to study his report so we can provide intelligent answers to the Court. On the other hand, while the issuance of Dr. Berndt's report will require counsel to work hard, we could certainly do so. We also suspect that Defendants seek to postpone the class certification hearing in part in order to make it seem more reasonable that Defendants have, last week, served upon plaintiffs and this Court another, irresponsibly huge, multi-binder filing of documents. As MDL Plaintiffs' counsel will argue at the February 10 hearing, those materials display obvious errors and omissions in the Defendants' prior submissions and ought to be stricken on numerous grounds.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Sobol', with a large, sweeping flourish extending from the end of the signature.

Thomas M. Sobol

TMS/har

cc: All Counsel of Record (via Verilaw)